IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL STAMP NO. 10168 OF 2005

Smt. Jyotsna Joshi ..Appellant

versus

Kalina C.H.S. Ltd. & ors. ..Respondents

Mr. M. S. Menon for the Appellant.

Mr. J. S. Kini for the Respondents No.3a and 3b.

CORAM : D. G. DESHPANDE,J.

DATE : 5TH JULY,2005

ORAL ORDER :

1. Heard counsel for the appellant and the respondent Nos. 3(a) and 3(b).

2. The appeal is under objection. Counsel for the appellant undertakes to remove all the objections positively without fail within two weeks from today.

3. At present, admittedly Respondent nos. 3(a) and 3(b) are in possession. When the original suit was filed by the Plaintiff, it was only for mandatory injunction. These respondents i.e. Respondent nos. 3(a) and 3(b) came to be joined in

the suit in 2002 as transferees during the pendency of the suit or at the time of filing of the suit. But in any case the plaintiff was required to specifically seek a relief of possession of the property from the defendants and that has not been done.

4. While making submissions, counsel for the appellant showed his willingness to appropriately amend the plaint so as to include the relief of possession as against these contesting respondents and he prayed that impugned order can be set aside and the matter be remanded back to the trial court again.

5. After recording the statement that respondent Nos. 3(a) and 3(b) are in possession, I pass the following order:

ORDER

. Impugned order of dismissal of the suit is set aside. Suit is remanded to the trial court. Parties to appear before the trial court on 8.8.2005. Plaintiff to file his proposed amendment of the plaint within four weeks therefrom and trial court to permit the original defendants to consequentially amend their written statements and

the trial will be held after permitting the parties to lead evidence. The trial court to decide the matter within nine months from the date of appearance. In the meantime till the suit is disposed of by the trial court, the Respondent Nos. 3(a) and 3(b) will not create third party rights in the property.

. With the above directions, the Appeal disposed of along with Civil Application.

5.7.2005 (D.G. DESHPANDE, J.)